

**Meeting Date:** July 25, 2019

**Agenda Item No. 8.**

**Agenda Item:** 2020 Omnibus temporary and proposed rulemaking to reauthorize IDAPA 13

**Bureau Chief Approval:** ES

**Prepared by:** Paul Kline

**Background:** Staff briefed the Commission at its May 17, 2019 meeting on the Governor's strategy for omnibus rulemaking to extend existing agency administrative rules beyond their expiration on June 30, 2019. Consistent with the Governor's Red Tape Reduction Act (Executive Order 2019-2), staff reviewed IDAPA 13 (Fish and Game) rule language and proposed edits to repeal outdated or ineffective rules, simplify existing rules and make other text consolidations that did not significantly change the effect of existing rules.

Notices of Omnibus Rulemaking--Temporary/Proposed Rules (attached) were published in the Idaho Administrative Bulletin on June 19, 2019, with a 21-day public comment period. Temporary Rules comprising the reauthorized IDAPA 13 took effect on June 30, 2019.

Since the Commission's adoption of temporary and proposed rules, staff have identified three inadvertent omissions in the reauthorized IDAPA that they recommend be reinstated in adopting pending rule language:

13.01.09: Forest grouse methods of take: The expiring rule version had exceptions nested within exceptions regarding take of forest grouse. In making edits for clarity, allowances for some methods of take for forest grouse were inadvertently not included.

13.01.10: Allowance for limited take of native amphibians/reptiles: The expiring rule version had an allowance for take/captive possession of up to 4 native amphibians and 1 native reptile; this allowance was dropped in editing.

13.01.11: Unattended line: While Idaho Code 36-1401(a) identifies an unattended fishing line as a rule violation that is an infraction, and IDAPA 13.01.11 has a definition of unattended line, the revised rule does not include a separate prohibition.

**Next steps:** Before final rules can take effect under the Idaho Administrative Procedure Act, the Commission must adopt/ratify pending rules for publication and review in the upcoming session of the Idaho Legislature. The Governor's Office Division of Financial Management directs agencies to submit pending rule language for approval (identifying any changes between proposed and pending rules) before adopting pending rules. Staff will submit language to DFM for approval, and provide any additional briefing to the Commission as appropriate. After Commission approval of pending rules at a future meeting, staff will coordinate with the Office of Administrative Rules Coordinator for publication of the appropriate *Notice of Rulemaking – Adoption of Pending Rule* in the Administrative Bulletin.

**Statutory Authority and/or Policy issues:** The Idaho Administrative Procedure Act, Idaho Code Title 67, Chapter 52 establishes requirements for agency rulemaking. Various provisions of Idaho Code Title 36 authorize the commission to adopt administrative rules.

**Public Involvement Process:** Notices of temporary and proposed rulemaking appeared in a special publication of the Idaho Administrative Bulletin on June 19, 2019. Agencies

published one Notice for rules with fees and one Notice for rules without fees. A public comment period of 21 days followed (June 19, 2019 – July 10, 2019). The Department has not received any public comments as of this writing. The Department received documentation from the Governor's Office regarding Commercial Fishing Licenses related to Executive Order 2019-01 (Licensing Freedom Act of 2019). The Department will provide information as to any changes between proposed rules and pending rules in the Administrative Bulletin Notice and on its rulemaking website.

**Staff Recommendation:** Staff will continue to update the Commission as process milestones are reached.

**Justification:** Additional rulemaking action (ratification of pending rules) will be necessary for rules re-authorized as temporary rules (effective June 30, 2019) to continue in effect as final rules following adjournment of the 2020 Legislative Session. Staff will continue to review as necessary to ensure consistency between legislative ideas, executive orders and other direction of the Governor's office, and Commission policy and priorities.